IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.667 OF 2004

Brihanmumbai Municipal Corporation)
a local body duly constituted under the)
provisions of the Mumbai Municipal)
Corporation Act, 1888 through the)
General Manager, Brihanmumbai Electric)
Supply and Transport Undertaking)
having his office at BEST Bhavan, BEST)
Marg, Mumbai-400 001.)..PETITIONER

Versus

1. Anil Mahadev Gore,)
C/o. BEST Workers' Union, 42, Kennedy)
Bridge, Mumbai-400 004.)
2. The General Secretary, Best Workers')
Union, 42, Kennedy Bridge, Mumbai-)
400 004.)..RESPONDENTS.

Mr. P.M. Palshikar i/b. Crawford Bayley & Co., for the
Petitioner.
Ms. Neeta Karnik, for the respondents.

CORAM: F.I. REBELLO, J.

DATE : 29th September,2004

ORAL JDUGMENT:

1. The petitioner Corporation has by the present petition impugned the order dated 4th October, 2002 passed by the

Industrial Court in Appeal against the order dated 19th April, 2002 passed by the Second Labour Court. The 12th Labour Court in a complaint filed by the Respondent No.1 workmen set aside the order of dismissal and directed reinstatement of the employee in service without back wages. The Industrial Court in Appeal was pleased to dismiss the Appeal preferred by the petitioner herein. Hence the present petition.

2. The petitioners pursuant to an enquiry conducted against the respondent workmen pursuant to charge sheet dated 6th May, 1997 by an order dated 17th October, 1997 dismissed the respondent No.1 from the services based on the findings recorded by the enquiry officer that the respondent No.1 was guilty of the misconduct alleged. The Disciplinary Authority held that considering the gravity of the misconduct and the past service record imposed the punishment of dismissal from the service. The charges alleged against the respondent workman were that he had committed misappropriation during the period from 4th May, 1996 to 5th October, 1996 in a sum of Rs.10,306.50 in issuing tickets as also some other charges and, therefore, charged him for misconduct under Standing Order 20(c). An internal Appeal preferred was dismissed by order dated 8th December, 1997. The second Appeal preferred was dismissed on 29th January, 1998.

3. In the complaint filed the Labour Court held that the enquiry conducted was not in violation of the principles of natural justice and fair play and the Standing Orders. The Labour Court further held that the findings were not perverse. Even after so recording the learned Labour Court held that there was no intentional act of misappropriation i.e.

misappropriation with intention to earn wrongful profit to the workman and that the respondent work man after notice to him had paid back the sum alleged to be short and/or misappropriated. The learned Labour Court thereafter after noting that the enquiry officer noticed that the past service of the delinquent employee is not very much satisfactory, observed that there is no instance brought on record to show that the delinquent employee was habitual in committing such similar act of misconduct and considering that the respondent workman worked for 20 years and had deposited the amount set aside the order of dismissal directing reinstatement without back wages. In the appeal preferred all that the learned Industrial Court held was that tickets were misplaced and the amount was not misappropriated by the present respondent employee and the act of misconduct would not amount to misappropriation and that view of the matter dismissed the Appeal.

4. At the hearing of this petition on behalf of the petitioner learned Counsel contended that once the enquiry officer had recorded a finding that the enquiry held was fair and proper and that findings were not perverse, in a case of misappropriation out not to have reinstated the respondent workman. He has placed reliance in the judgment of the Apex Court in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.)., vs. Secretary, Sahakari Noukarara Sangha Etc. 2000 II C.L.R.568 and another judgment of the Apex Court in Regional Manager, U.P.S.R.T.C., Etawah and Ors. v. Hoti Lal and Anr., 2003 AIR SCW 801. It is, therefore, submitted that the orders of the Courts below ought to be set aside and the order of dismissal restored.

5. On the other hand on behalf of the respondent learned Counsel submits that considering the totality of the circumstances and the evidence it really cannot be said that there was any act of misappropriation committed by the respondent. It is pointed out that this is a system failure where the petitioner themselves have a system whereby the tickets issued cannot be accounted for. In these circumstances the Labour Court set aside the punishment of dismissal and reinstated the respondent in service without back wages and the Industrial Court has not chosen to interfere with the same, this Court ought not in exercise of the extra ordinary jurisdiction interfere with the said punishment imposed.

6. After the matter was heard and placed for orders considering the arguments the petitioners Counsel was asked to as to whether instead of an order of dismissal the same can be substituted by an order of discharge. On instructions learned Counsel for the petitioner states that it would not be possible as in such a case where the charge of misappropriation has been alleged and proved if the respondent workman is given the benefit all such similarly placed workmen will also seek benefit against the petitioner corporation.

7. The real issue in the matter is whether after the Tribunal had come to the conclusion that the enquiry held was fair and proper and the findings were not perverse, whether it was open to the Labour Court or to the Industrial Court to record a finding that the charge of misappropriation had not been proved and/or that this was not a case of

misappropriation. Both the Labour Court and the Industrial Court misdirected themselves in law in so holding. Once the Labour Court recorded a finding that the findings were not perverse what it accepted is that the charges as levelled against the workman based on the material had been proved. The charge levelled against the workman was in the matter of misappropriation. Once that being so, it was not open to the Labour Court to explain the said charge by holding that there was no intentional misappropriation. If that was the case the Labour Court ought to have recorded a finding that the finding on that count was perverse. That was not done. More startling is the finding by the Industrial Court, an Appellate body, which has come to a totally different finding that this was a case where the tickets were misplaced and not a case of misappropriation. From where the Industrial court could have arrived at this finding and that too only in a skeleton paragraph which is the only discussion, atleast this Court is unable to comprehend. Either the Industrial Court ought to have come to a conclusion that the findings recorded by the Labour Court had to be set aside which it chose not to do but proceeded to record a finding contrary to the finding recorded by the enquiry officer and affirmed by the Labour Court. Both the orders, therefore, will have to be set aside.

8. The question really is whether on the facts and circumstances this Court ought to interfere with the punishment of dismissal imposed by the enquiry officer. It is true that it was sought to be contended on behalf of the respondent workman that he has put in 20 years of service. The charges levelled are in respect of tickets over a period from 4th May, 1996 to 19th September, 1996. At no point of

time did the workman take any stand either in the enquiry or otherwise that the tickets were misplaced. On the contrary the petitioner examined witnesses to establish that tickets were issued and that the respondent workman instead of returning the ticket blocks returned the same in his own handwriting and not marked by the appropriate staff. Apart from that there are finding of the enquiry officer that it is found that in the past also in the matter of shortages on 9th February, 1996, 12th December, 1996 he was warned and on 24th July, 1996 he was suspended for one day. Considering that and the fact that the amount due was in a sum of Rs.10,000/- and the charge of misappropriation had been proved considering the judgment in Janatha Bazar (supra) it was not open to the Labour Court or the Industrial Court to interfere with the punishment nor for this Court on the ground of sympathy to interfere with the same. In the light of that the following order:-

. Petition allowed. Rule made absolute in terms of prayer clause (a). No order as to costs.

(F.I.REBELLO, J.)